

Law Offices

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1500 K Street N. W.
Suite 1100
Washington, D.C.
20005-1209

(202) 842-8800
(202) 842-8465 fax
www.drinkerbiddle.com

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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 02-55, Nextel Communications, Inc. Petition for Waiver
of the Commission's Rules to Allow Genesee to Continue to Operate with
5 kHz Deviation Following Reconfiguration – Written *ex parte*
submission

Dear Ms. Dortch:

Nextel Communications, Inc. ("Nextel") a wholly owned subsidiary of Sprint Nextel Corporation, submits this *ex parte* letter in response to the Comments submitted in the above-referenced matter by the Region 55 700 MHz & 800 MHz Regional Planning Committee (the "Region") regarding Nextel's Petition for Temporary Waiver of Section 90.210 of the Commission's rules, 47 C.F.R. § 90.210, to allow the County of Genesee, New York ("Genesee" or the "County") to continue to operate its mobile and portable radios with 5 kHz deviation on the new NPSPAC band following reconfiguration (the "Waiver Request").

As explained in the Waiver Request, in a series of meetings leading up to the filing of the Waiver Request, the Bureau staff, the 800 MHz Transition Administrator, Nextel, Genesee and its technical consultants, all concurred that a temporary waiver to enable the County to continue to operate its two "FRED" channels without modifying its subscriber radios' deviation was a technically feasible option to speed the County's long delayed reconfiguration. A waiver represented a workable and in fact the most straightforward solution to addressing the County's unique "FRED" operations, avoiding for the County the need to engage in possibly protracted, costly mitigation activities. All the parties recognized that any waiver would be in place only for a period of time commensurate with the County continued FRED operations, and thus would provide the County with sufficient flexibility to operate now and in the future.

The Bureau sought comment on the Waiver Request, and the Region 55 Public Safety Planning Committee filed comments raising several issues with the grant of Waiver Request. However, these comments appear not to fully understand the facts, the effect of the proposed waiver on the Region or beyond, and the fact that both the County and Nextel are bound under 800 MHz reconfiguration requirements to seek the least cost

method of achieving comparable facilities post-rebanding. In short, there is no objective basis for any objection to Commission grant of the waiver.

The comment in numbered paragraph 1 raises the specter of more difficult frequency coordination in the event the waiver is granted. However, this expressed concern is directly addressed by the adjacent channel co-ordination process that was drafted by the County's own technical consultant under consultation with the TA technical staff and in cooperation with Nextel that was attached as part of the Waiver Request. That analysis, using a methodology specified in the TSB-88 standard,¹ was based upon real-world measurements of FM modulation, with full consideration given to sideband issues.² It demonstrates, at most, a minimal effect on adjacent frequency planning. In a region where there are significant numbers of available new NPSPAC frequencies to be assigned, this does not represent a serious practical concern.

In numbered paragraph 2, Region 55 misstates that the Waiver Request contemplates reducing deviation. In fact the waiver would allow the County to temporarily maintain its 5 KHz radio deviation on its subscriber radios, so it is not obvious why the Region is making this inapposite point.

Numbered paragraph 3 suggests that there would have to be amendments to the regional plan to implement the waiver. Because the coordination analysis has already been performed, this effort should not be significant. As to the adjacent region effect, the technical analysis performed concluded that the temporary waiver should have little if any impact on adjacent regions, and thus, the generalized speculation to the contrary is not well founded.

The point in paragraph 4 of the Region's submission is that the Waiver Request is not time limited and therefore it places a burden on regional public safety operations. This assertion is not supported and Nextel believes that the coordination procedures, and the numbers of available new NPSPAC frequencies to be assigned in the region in fact demonstrate just the opposite. Moreover, the Region makes no connection between the

¹ TIA TSB-88.1-C, TSB-88.3-C, "Wireless Communications Systems – Performance in Noise and Interference-Limited Situations, Recommended Methods for Technology-Independent Modeling, Simulation and Verification" (February 2008).

² Further, the analysis demonstrates that the dominant risk of interference (which, in turn, is fully addressed by the modified coordination procedures) is not from the 5 kHz deviation of Genesee's transmitters, but, rather, from the adjacent 4 kHz transmitters into Genesee's receivers (which must remain optimized for 5 kHz operation). The potential interference *from* the 5 kHz deviation could have been addressed with a smaller change in the interference contour.

uncertain timeframe of when the County chooses to retire its FRED operations and the alleged additional burden the Region would have in frequency coordination.

The final point made is that the Region “would like to see other solutions to Genesee County 800 MHz reconfiguration, which will comply with NPSPAC 4 kHz deviation requirement and will not have such a significant negative impact to public safety.” Nextel respectfully submits that the Region has failed to articulate any serious reason why the public interest would be served by requiring absolute uniformity immediately in an instance where that would require more time and more costly mitigation efforts, and where the temporary waiver addresses Genesee’s need to operate using its unique FRED channels until it can acquire the funding to upgrade its operations. Moreover, the sound technical analysis provided along with the Waiver Request demonstrated the very minimal effect that grant of a waiver would have on other public safety operations. There is no similar technical analysis provided by the Region that demonstrates any significant negative effect on other licensees and therefore the generalized stated concerns offered by the Region cannot be credited as objective fact.

For these reasons, a temporary waiver of the Commission’s rules as presented in the Waiver Request would be appropriate in this instance and would promote the public interest.

Respectfully submitted,

/s/ Laura H. Phillips

Laura H. Phillips
Counsel for Nextel Communications,
Inc.

LHP

cc: Michael Wilhelm
Roberto Mussenden
Peter Stritzinger (Region 55)
Alan Tilles
Jeffrey Mullens, TA